

Land Use and Development Code Amendment: Home Occupation

**Town of Gorham
Planning Board Meeting
September 13, 2021**

ITEM 2 - Land Use and Development Code – Public Hearing: Proposed amendments to the Land Use and Development Code’s Home Occupation ordinance, regarding allowed uses and standards.

INDEX OF PACKET ENCLOSURES	
DESCRIPTION	PAGE NUMBER
1. Overview	2
2. Motions	2

AMENDMENT TRACKING

DESCRIPTION	COMMENTS	STATUS
Town Council Meeting	The Town Council forwards the item to the Planning Board for a public hearing and recommendations. (7 ayes)	June 1, 2021
Planning Board - Meeting Discussion	The item was forwarded to the PB Ordinance Sub-committee for review and recommendations.	July 12, 2021
PB- Ordinance Committee	The committee added a new use J and moved the item for full PLBD public hearing in September.	August 2, 2021
Planning Board – Public Hearing		September 13, 2021

The Planning Board refers to staff notes during the review process; however, it shall be noted that staff recommendations are noncommittal and all final decisions are those of the Planning Board and not Town Staff.

Memo completed by Thomas Poirier, Director of Community Development.

Land Use and Development Code Amendment: Home Occupation

1. Overview

The Planning Board’s ordinance committee reviewed the proposed amendments and recommended the addition of a new use “j. retail online sales” and that home occupation uses be expanded to every district that allows residential uses. Community Development staff reviewed the ordinance and found that the home occupation use was not allowed in 2 districts that allow residential units: Commercial Office and Narragansett Mixed-Use District. Staff has added draft language adding home occupations to both of those districts. Staff has also included a proposed definition for Online Retail Sales.

Below information in *italics* is information provided as part of previous PLBD staff notes. *The Town Council is forwarding a request to amend the Home Occupation ordinance to give greater flexibility for allowed uses, amount of space available, and simplifies standards. Home occupations are allowed in the following zones: UR, SR, R, LFVC, GVC, UR, RC, OR, PSC, and MHC.*

The Planning Board should discuss whether this item should be forwarded to one of the PLBD Sub-Committees for review and recommendations back to the full Planning Board. One item the Planning Board may want to review is allowing home occupations in some of the Town’s mixed-use districts such as Narragansett, Mosher Corner, and/ or South Gorham Crossroads or Commercial Center.

The ordinance committee’s requested changes are shown in blue and underlined. Language shown in black underlined and ~~struck through~~ are proposed amendments forwarded from the Town Council.

Proposed Amendment:

Chapter 1: ZONING REGULATIONS

SECTION 1-5 - Definitions

Business and Professional Offices for the conduct of business and involve no sales of tangible products available on the premises, except as a minor and ancillary use as would be directly related to the conduct of a given profession, or storage of materials or equipment that are used off the premises. Professional offices include, but are not limited to, the following: office facility of a salesman, sales representative or a manufacturer’s representative; office facility of an architect, engineer, broker, dentist, physician, optometrist, psychiatrist, insurance agent, land surveyor, lawyer, musician, real estate agent or accountant; office facility of a minister, rabbi or other religious leader, provided that the office is open to the public or congregation. The following uses are not considered business and professional offices:

- 1) Distribution facilities
- 2) Sales offices involving on-premises display and sales of materials, except as a minor and ancillary use as described above
- 3) Offices of building contractors involving the storage of materials or equipment.

Land Use and Development Code Amendment: Home Occupation

Personal Services	<u>A service based on the intellectual or manual efforts of an individual rather than a salable product. Personal services includes, but are not limited to, the following: barber, hairdresser, beauty parlor, spa, barbershop, shoe repair, shoe shine, photographic studio, and businesses providing similar services of a personal nature.</u>
Repair Services	Businesses providing for the repair <u>and maintenance</u> of personal and business property such as radios and televisions; electrical and electronic equipment; watches, clocks, and jewelry; furniture and upholstery; musical instruments; sporting equipment; small engines and equipment; <u>small appliances; bicycles; electric bicycles and similar items but not including the repair of motor vehicles, boats, recreational vehicles or heavy equipment. Retail sales of parts and supplies shall be allowed provided such sales are accessory to the repair service.</u>
<u>Instructional Services</u>	<u>An instructional service is a use in which the practitioner provides the client with special instruction in a specific area of study. Instructional services include, but are not limited to, the following: music, dance, arts and crafts, and tutoring.</u>
<u>Home crafts</u>	<u>The business activities whereby the commodity for sale is completely manufactured by the resident craftsman. Home crafts may include, but are not limited to, the following: artists, jewelers, sculptors, dressmaking, seamstresses and tailors, and include such activities as model making, bakery, rug weaving, lapidary work and furniture making.</u>
<u>Online Retail Sales</u>	<u>The sale of goods and services from the seller to the customer over the internet using a web browser or a mobile app.</u>

SECTION 1- 13 – COMMERCIAL/ OFFICE DISTRICT

B. PERMITTED USES

- 14) Accessory buildings and uses including home occupations.

SECTION 1- 16 – NARRAGANSETT MIXED-USE DISTRICT

B. PERMITTED USES

- 3) Residential Uses – as part of a mixed-use development.

c) Accessory uses including home occupations.

CHAPTER 2: GENERAL STANDARDS OF PERFORMANCE

SECTION 2-15 – HOME OCCUPATION STANDARDS

Home occupations shall conform to the following requirements:

Land Use and Development Code Amendment: Home Occupation

1. The use of a dwelling unit for a home occupation shall be clearly incidental and subordinate to its use for residential purposes.
2. A home occupation may not alter the residential character of the structure, neighborhood or change the character of the lot from its principal use as a residence.
- ~~1-3.~~ 3. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto with the exception of farm/roadside stands which are allowed to be carried on in a separate structure.
- ~~2-4.~~ 4. Not more than two people outside the family shall be employed in the home occupation.
- ~~3-5.~~ 5. There shall be no exterior display, no exterior sign (except as expressly permitted by the district regulations of this chapter), no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
- ~~4-6.~~ 6. No nuisance, offensive noise, vibration, smoke, dust, odors, heat, or glare shall be generated. The noise standards shall comply with the standards identified under Chapter 4, Section 4-9, and T. Noise.
- ~~5-7.~~ 7. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the neighborhood or generate more than 10 vehicle trips per day.
- ~~6-8.~~ ~~In addition to the~~ 8. ~~Off-street parking provided to~~ Off-street parking shall meet the standards set forth in Section 2-2 of this Chapter. If additional parking spaces are provided, they shall be located to the rear or side yard of the principal structure but not within the yard setbacks. Off-street parking lots with three (3) or more spaces shall be buffered from abutting residences. ~~normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the vehicles of the maximum of users~~ the home occupation may attract during peak operating hours.
9. The sale of products shall be limited to those which are crafted, assembled or substantially altered on the premises, to catalog items ordered off the premises by customers and to items which are accessory and incidental to a service which is provided on the premises.
- ~~7-10.~~ 10. The home occupation shall not utilize more than 20% of the total floor area of the dwelling unit or 576 square feet, whichever is more, with the exception of day care home facilities which may utilize up to 50% of the dwelling unit in addition to the use of the exterior of the property for State required play areas.
- ~~8-11.~~ 11. The following uses shall be allowed as home occupations as defined in Chapter 1, Section 1-5 Definitions:
 - a. Business and Professional offices
 - b. Personal Services
 - c. Instructional Services

Land Use and Development Code Amendment: Home Occupation

- d. Repair Services
- e. Day Care Home
- f. Home crafts
- g. Construction Services
- h. Office of a Contractor or Tradesman
- i. Medical marijuana caregiver
- j. Online Retail Sales

A home occupation shall be limited to the following:

- ~~a. art studio~~
- ~~b. bed and breakfast~~
- ~~c. day care home~~
- ~~d. dressmaking shop~~
- ~~e. farm/roadside stands~~
- ~~f. hairdressing shop~~
- ~~g. teaching or tutoring facilities~~
- ~~h. office of a physician, dentist, optometrist, lawyer, engineer, architect or accountant~~
- ~~i. office of a real estate broker or agent~~
- ~~j. office of an insurance agent or broker~~
- ~~k. office of construction services~~
- ~~l. uses similar and compatible with the above as determined by the Town's Code Enforcement Officer~~

~~9-12.~~ Permit required. A permit must be obtained from the Code Enforcement Department prior to commencement of the Home Occupation. As part of the permit approval, the Town's Code Enforcement Officer is authorized to limit the proposed use or require on-site improvements to minimize potential negative impacts to the neighborhood and/or roadways.

~~10-13.~~ A home occupation shall not be interpreted to include the following:

- a. facilities for the repair of motor vehicles
- b. day care center

~~11-14.~~ In addition to the home occupation standards listed above, the home occupation uses listed below shall meet the following requirements:

- a. Instructional Services
 - 1) Instructional services involving a maximum of four students at a time are permitted. In the case of musical instructions, no more than two students at a time shall be permitted.
- b. Day Care Home
 - 1) Prior to the permit approval of the use by the Code Enforcement Officer, the applicant must obtain a license from the State of Maine Department of Child and Family Services.
- c. Construction Services
 - 1) Limited to two of the following: pick-up trucks, vans or box trucks and one trailer parked/stored outside.
 - 2) No outside storage of materials.

Land Use and Development Code Amendment: Home Occupation

- 3) Material storage buildings/space limited to 20% of the size of the total area of the dwelling unit.

d. Repair Services

- 1) The repair of any small engines or equipment with any type of gas, diesel, oil, or natural gas engine is not permitted.

e. Medical marijuana caregivers:

- 1) All growing and related growing supplies are required to be stored inside and within the 20% of the total floor area of the dwelling unit or 576 square feet, whichever is more.
- 2) No outside cultivation or storage of marijuana, marijuana products, or related supplies is permitted. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence, including but not limited to, any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.
- 3) The odor generated from marijuana cultivation or harvesting shall not be reasonably detectable from any adjacent lot, public right-of-way, or outside of the growers' leased area. The marijuana cultivation shall provide for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation from being dispersed or released outside the building or lease line.
- 4) The medical marijuana caregiver shall obtain a State of Maine conditional license prior to operating in the town of Gorham.
- 5) That the grow plant canopy size shall be capped at a maximum of 500 sq. ft.
- 6) All cultivation areas shall meet all applicable local, state, and federal building, electrical, and fire codes.
- 7) That a property owner's written consent to cultivate marijuana is required for growers located on lots/ leased areas not owned by them. An owner of a residential structure can prohibit the cultivation of marijuana on his or her property.
- 8) The cultivation areas shall be locked when not being attended to by the grower of the marijuana.
- 9) Prohibited: The following is prohibited as part of the home occupation medical caregiver marijuana growing:
 - a. The home extractions of marijuana concentrate using hazardous substances.
 - b. The manufacturing, testing, retail sale, gifting, and/or growing of marijuana for adult use.
 - c. No medical marijuana client is allowed to pick-up the material on the lot where the marijuana is being grown.

PROPOSED MOTIONS:

Move to recommend adoption of the proposed Zoning Amendment to Home Occupations uses under Chapter 1 and 2 as amended by the Planning Board.